THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 1645 of 2005

Date of Decision: 25 - 9 - 2006

Dalip Singh **.....Petitioner**

v.

Prakash Kaur etc. **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.N.D.S.Mann, Advocate
for the petitioner.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against orders dated 17.8.2004 and 24.11.2004 vide which application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure filed by the plaintiff was dismissed.

In this petition before me learned counsel for the petitioner has only raised one argument to the effect that during the pendency of the civil suit, the defendants, respondents in this revision petition, should be restrained from alienating the suit property.

A perusal of the facts of the case would show that the land subject matter of controversy was jointly owned by Kabal Singh, Bara Singh and Joginder Singh in equal shares. The plaintiff is the son of Joginder Singh and the defendants are mother, brother and sister of the plaintiff (wife and children of Joginder Singh). Kabal Singh died in January 1993 and the land falling to his share was mutated in the name of his two brothers Bara Singh and Joginder Singh.

Subsequently, Bara Singh died in October, 1993 and his share was also mutated in favour of Joginder Singh. Thereafter Joginder Singh also died. Learned counsel submits that he died about 5 years ago. Consequent upon his death the entire land was mutated in equal shares in favour of the plaintiff, his mother, brother and sister. Thus all became owners of ¼th share of the property. It was at this stage that the plaintiff came out with a registered will allegedly executed in favour of the plaintiff by Kabal Singh who had died in January, 1993. On the basis of this registered will the plaintiff claims that he is entitled to 1/3rd share in the property in addition to the share which would come to him through his father Joginder Singh. He thus claims ownership of half of the property.

The lower Appellate Court has held that in case the plaintiff is ultimately declared as co-owner of the suit land to the extent of half share, in that event any alienation of the suit property by the defendants shall be hit by the principle of lis pendens and the vendees shall be bound by the decree passed in the main suit and the plaintiff would need not to file fresh suit for recovery of possession. The observations of the lower Appellate Court are as hereunder:-

> "11. If ultimately the plaintiff is declared co-owner in the suit land to the extent of ½ share as claimed by him in the plaint, in that event, the alienation of suit land made by the respondents during the pendency of the suit shall be hit by rule of lis pendens and their vendees shall be bound by the decree passed in the main suit and the appellant need not file fresh suit for recovery of possession against the vendees of the respondents. So, the principle of lis-pendens shall protect the interest of the appellant in the suit land."

Learned counsel for the petitioner assailing the aforementioned observations submits that in the present case, the respondents should be restrained from alienating the property to the extent of half share which the plaintiff is claiming in the suit. I do not find any merit in this argument. In the present case,

the property on the death of Bara Singh was first mutated in favour of Kabal Singh and Joginder Singh. On the death of Kabal Singh it was mutated in favour of Joginder Singh. On the death of Joginder Singh it was then mutated in favour of the plaintiff and the defendants. It is only after the death of his father Joginder Singh that the plaintiff has come out with a registered will and then filed the present suit. In spite of the fact that he is resident of the same Village Kehargarh, Tehsil Rajpura, he did not raise any objection when the share of Kabal Singh was mutated in favour of Bara Singh and Joginder Singh and even thereafter when on the death of Bara Singh his share was mutated in favour of Joginder Singh in the year 1995. In these circumstances I am not inclined to put any fetter in the enjoyment of the property by the defendants who are none else than the real mother, brother and sister of the plaintiff. His rights have sufficiently been protected by the Lower Appellate Court.

For the reasons aforementioned, I find no merit in this revision petition and the same is dismissed. It may, however, be noted that the observations made hereinabove are only for the purpose of deciding this revision petition and would not have any bearing on the final adjudication of the suit.

(P.S.PATWALIA)
JUDGE

September 25, 2006.

RC